

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

JAMES LAWRENCE KWAKO, M.D.

Case No. 800-2016-021032

**Physician's and Surgeon's
Certificate No. C 37727**

Respondent

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 12, 2019.

IT IS SO ORDERED: June 13, 2019.

MEDICAL BOARD OF CALIFORNIA



Ronald Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 800-2016-021032

14 JAMES LAWRENCE KWAKO, M.D.
1805 East Cabrillo Boulevard, Suite D
15 Santa Barbara, California 93108-2884

OAH No. 2019031203

16 Physician's and Surgeon's Certificate
No. C 37727,

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
24 Board of California ("Board"). She brought this action solely in her official capacity and is
25 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
26 Rebecca L. Smith, Deputy Attorney General.

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1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a prima facie case with respect to the charges and allegations contained in Accusation
4 No. 800-2016-021032 and that he has thereby subjected his license to disciplinary action.

5 10. Respondent agrees that if he ever petitions for early termination or modification of
6 probation, or if the Board ever petitions for revocation of probation, all of the charges and
7 allegations contained in Accusation No. 800-2016-021032 shall be deemed true, correct and fully
8 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
9 involving Respondent in the State of California.

10 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
11 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
12 Disciplinary Order below.

13 CONTINGENCY

14 12. This stipulation shall be subject to approval by the Medical Board of California.
15 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
16 Board of California may communicate directly with the Board regarding this stipulation and
17 settlement, without notice to or participation by Respondent or his counsel. By signing the
18 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
19 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
20 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
21 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
22 action between the parties, and the Board shall not be disqualified from further action by having
23 considered this matter.

24 13. The parties understand and agree that Portable Document Format ("PDF") and
25 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
26 facsimile signatures thereto, shall have the same force and effect as the originals.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 37727 issued to Respondent James Lawrence Kwako, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES.** Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

2. **CONTINUING MEDICAL EDUCATION COURSE - PRESCRIBING - BEST PRACTICE.** Within sixty (60) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval prescribing educational program(s) or course(s) which shall not be less than forty (40) hours. The prescribing educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The prescribing educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course.

1 Respondent shall successfully complete the prescribing educational program(s) or course(s) no
2 later than six (6) months of the effective date of this Decision. Respondent shall provide proof of
3 attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this
4 condition.

5 3. MONITORING - PRACTICE. Within thirty (30) calendar days of the effective date
6 of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
7 practice monitor, the name and qualifications of one or more licensed physicians and surgeons
8 whose licenses are valid and in good standing, and who are preferably American Board of
9 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
10 personal relationship with Respondent, or other relationship that could reasonably be expected to
11 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
12 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
13 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

14 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
15 and Accusation(s), and a proposed monitoring plan. Within fifteen (15) calendar days of receipt
16 of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a
17 signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands
18 the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor
19 disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan
20 with the signed statement for approval by the Board or its designee.

21 Within sixty (60) calendar days of the effective date of this Decision, and continuing
22 throughout probation, Respondent's practice shall be monitored by the approved monitor.
23 Respondent shall make all records available for immediate inspection and copying on the
24 premises by the monitor at all times during business hours and shall retain the records for the
25 entire term of probation.

26 If Respondent fails to obtain approval of a monitor within sixty (60) calendar days of the
27 effective date of this Decision, Respondent shall receive a notification from the Board or its
28 designee to cease the practice of medicine within three (3) calendar days after being so notified.

1 Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring
2 responsibility.

3 The monitor shall submit a quarterly written report to the Board or its designee which
4 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
5 are within the standards of practice of medicine, and whether Respondent is practicing medicine
6 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
7 that the monitor submits the quarterly written reports to the Board or its designee within ten (10)
8 calendar days after the end of the preceding quarter.

9 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
10 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
11 the name and qualifications of a replacement monitor who will be assuming that responsibility
12 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor
13 within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent
14 shall receive a notification from the Board or its designee to cease the practice of medicine within
15 three (3) calendar days after being so notified Respondent shall cease the practice of medicine
16 until a replacement monitor is approved and assumes monitoring responsibility.

17 In lieu of a monitor, Respondent may participate in a professional enhancement program
18 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
19 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
20 chart review, semi-annual practice assessment, and semi-annual review of professional growth
21 and education. Respondent shall participate in the professional enhancement program at
22 Respondent's expense during the term of probation.

23 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
24 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
25 Chief Executive Officer at every hospital where privileges or membership are extended to
26 Respondent, at any other facility where Respondent engages in the practice of medicine,
27 including all physician and locum tenens registries or other similar agencies, and to the Chief
28 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

1 Respondent. Respondent shall submit proof of compliance to the Board or its designee within
2 fifteen (15) calendar days.

3 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

4 5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
5 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
6 advanced practice nurses.

7 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
8 governing the practice of medicine in California and remain in full compliance with any court
9 ordered criminal probation, payments, and other orders.

10 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
11 under penalty of perjury on forms provided by the Board, stating whether there has been
12 compliance with all the conditions of probation.

13 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
14 the end of the preceding quarter.

15 8. GENERAL PROBATION REQUIREMENTS.

16 Compliance with Probation Unit

17 Respondent shall comply with the Board's probation unit.

18 Address Changes

19 Respondent shall, at all times, keep the Board informed of Respondent's business and
20 residence addresses, email address (if available), and telephone number. Changes of such
21 addresses shall be immediately communicated in writing to the Board or its designee. Under no
22 circumstances shall a post office box serve as an address of record, except as allowed by Business
23 and Professions Code section 2021(b).

24 Place of Practice

25 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
26 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
27 facility.

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1 License Renewal

2 Respondent shall maintain a current and renewed California physician's and surgeon's
3 license.

4 Travel or Residence Outside California

5 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
6 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
7 (30) calendar days.

8 In the event Respondent should leave the State of California to reside or to practice,
9 Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the
10 dates of departure and return.

11 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
12 available in person upon request for interviews either at Respondent's place of business or at the
13 probation unit office, with or without prior notice throughout the term of probation.

14 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
15 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
16 more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return
17 to practice. Non-practice is defined as any period of time Respondent is not practicing medicine
18 as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours
19 in a calendar month in direct patient care, clinical activity or teaching, or other activity as
20 approved by the Board. If Respondent resides in California and is considered to be in non-
21 practice, Respondent shall comply with all terms and conditions of probation. All time spent in
22 an intensive training program which has been approved by the Board or its designee shall not be
23 considered non-practice and does not relieve Respondent from complying with all the terms and
24 conditions of probation. Practicing medicine in another state of the United States or Federal
25 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
26 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
27 considered as a period of non-practice.

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1 In the event Respondent's period of non-practice while on probation exceeds eighteen (18)
2 calendar months, Respondent shall successfully complete the Federation of State Medical Boards'
3 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment
4 program that meets the criteria of Condition 18 of the current version of the Board's "Manual of
5 Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of
6 medicine.

7 Respondent's period of non-practice while on probation shall not exceed two (2) years.

8 Periods of non-practice will not apply to the reduction of the probationary term.

9 Periods of non-practice for a Respondent residing outside of California will relieve
10 Respondent of the responsibility to comply with the probationary terms and conditions with the
11 exception of this condition and the following terms and conditions of probation: Obey All Laws;
12 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
13 Controlled Substances; and Biological Fluid Testing.

14 11. COMPLETION OF PROBATION. Respondent shall comply with all financial
15 obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar
16 days prior to the completion of probation. Upon successful completion of probation,
17 Respondent's certificate shall be fully restored.

18 12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
19 of probation is a violation of probation. If Respondent violates probation in any respect, the
20 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
21 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
22 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
23 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
24 be extended until the matter is final.

25 13. LICENSE SURRENDER. Following the effective date of this Decision, if
26 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
27 the terms and conditions of probation, Respondent may request to surrender his or her license.
28 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in

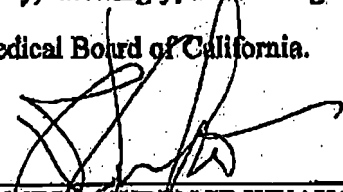
1 determining whether or not to grant the request, or to take any other action deemed appropriate
2 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
3 shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the
4 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
5 longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical
6 license, the application shall be treated as a petition for reinstatement of a revoked certificate.

7 14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
8 with probation monitoring each and every year of probation, as designated by the Board, which
9 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
10 California and delivered to the Board or its designee no later than January 31 of each calendar
11 year.

12
13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney, Rebecca Blackstone Lowell. I understand the stipulation and the
16 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
17 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
18 bound by the Decision and Order of the Medical Board of California.

19
20 DATED: 5-13-19


21 JAMES LAWRENCE KWAKO, M.D.
Respondent

22 I have read and fully discussed with Respondent James Lawrence Kwako, M.D. the terms
23 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
24 Order. I approve its form and content.

25
26 DATED: 5/17/2019


27 REBECCA BLACKSTONE LOWELL
Attorney for Respondent
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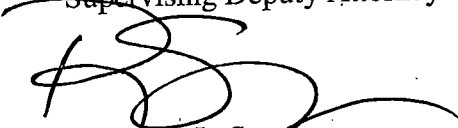
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: May 17, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General


REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-021032

1 XAVIER BECERRA
2 Attorney General of California
3 JUDITH T. ALVARADO
4 Supervising Deputy Attorney General
5 REBECCA L. SMITH
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MARCH 13, 2019
BY: [Signature] ANALYST

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2016-021032

James Lawrence Kwako, M.D.
1805 East Cabrillo Boulevard, Suite D
Santa Barbara CA 93108-2884

ACCUSATION

Physician's and Surgeon's Certificate
No. C 37727,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about November 7, 1977, the Board issued Physician's and Surgeon's Certificate Number C 37727 to James Lawrence Kwako, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2021, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"..."

5. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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1 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
2 the board or an administrative law judge may deem proper.

3 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
4 review or advisory conferences, professional competency examinations, continuing education
5 activities, and cost reimbursement associated therewith that are agreed to with the board and
6 successfully completed by the licensee, or other matters made confidential or privileged by
7 existing law, is deemed public, and shall be made available to the public by the board pursuant to
8 Section 803.1.”

9 6. Section 2234 of the Code, states:

10 “The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter.

15 “...

16 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
17 omissions. An initial negligent act or omission followed by a separate and distinct departure from
18 the applicable standard of care shall constitute repeated negligent acts.

19 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
20 that negligent diagnosis of the patient shall constitute a single negligent act.

21 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
22 constitutes the negligent act described in paragraph (1), including, but not limited to, a
23 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
24 applicable standard of care, each departure constitutes a separate and distinct breach of the
25 standard of care.

26 “...”

27 ///

28 ///

1 7. Section 725 of the Code states:

2 "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
3 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
4 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
5 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
6 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language
7 pathologist, or audiologist.

8 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
9 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
10 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
11 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
12 imprisonment.

13 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
14 administering dangerous drugs or prescription controlled substances shall not be subject to
15 disciplinary action or prosecution under this section.

16 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
17 for treating intractable pain in compliance with Section 2241.5."

18 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

19 8. Code section 4021 states:

20 "'Controlled substance' means any substance listed in chapter 2 (commencing with Section
21 11053) of Division 10 of the Health and Safety Code."

22 9. Code section 4022 provides:

23 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in
24 humans or animals, and includes the following:

25 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
26 prescription,' 'Rx only' or words of similar import.

27 ///

28 ///

1 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
2 by or on the order of a _____,’ ‘Rx only,’ or words of similar import, the blank to be filled
3 in with the designation of the practitioner licensed to use or order use of the device.

4 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006.”

6 **FACTUAL ALLEGATIONS**

7 10. Patient 1¹ first presented to Respondent, a family practitioner, on January 26, 2015,
8 with complaints of right shoulder pain. He reported a prior history of cortisone injection with
9 subsequent increased range of motion. He also reported a 5-year history of low back pain,
10 requiring bedrest for a month. The patient’s problem list noted shoulder pain, colitis and knee
11 pain. The patient’s intake form sets forth a history of back trouble, broken bones and colitis.
12 Respondent documented a review of systems, which was positive for multiple symptoms,
13 including nervousness, sleeplessness, depression, memory loss, muscle cramps, muscle weakness,
14 pain in joints and swollen joints. Physical examination revealed abnormalities in the right arm
15 and shoulder. Respondent’s diagnosis was right shoulder myositis. Respondent documented a
16 plan which included blood tests, a complete examination, obtain the patient’s old records,
17 stretching exercises, rest and a transcutaneous electric nerve stimulator (TENS).² Respondent
18 also prescribed Norco 10/325 mg,³ Soma 350 mg,⁴ and Melatonin.

19 11. A review of Patient 1’s CURES Report⁵ reflects that on that same day, January 26,
20 2015, he filled a prescription for 60 tablets of Soma 350 mg and two prescriptions for 60 tablets
21 of Norco 10/325 mg, prescribed by Respondent.

22 ¹ For privacy purposes, the patient in this Accusation is referred to as Patient 1.

23 ² A TENS unit is a device to stimulate the nerves for therapeutic purposes and treat pain.

24 ³ Norco, a brand name for hydrocodone-acetaminophen, is a narcotic pain medication. It is a
25 Schedule II Controlled Substance and a dangerous drug.

26 ⁴ Soma, a brand name for carisoprodol, is a muscle relaxant. It is a Schedule IV Controlled
27 Substance and a dangerous drug.

28 ⁵ CURES is the Controlled Substance Utilization Review and Evaluation System which stores
Schedule II, III and IV controlled substance prescription information reported as dispensed in California.

1 12. Laboratory studies were obtained on February 7, 2015, including a complete blood
2 count, complete metabolic panel and lipid panel, all of which were essentially unremarkable.

3 13. On February 19, 2015, Respondent performed a complete physical examination of
4 Patient 1. The patient's blood pressure was 120/80. Respondent noted that the patient had an
5 abnormality of his joints with both the right and left shoulders circled on a diagram.
6 Respondent's assessment included shoulder myositis.

7 14. Patient 1's CURES Report reflects that on February 26, 2015, he filled a prescription
8 for 60 tablets of Soma 350 mg and 60 tablets of Norco 10/325 mg prescribed by Respondent.

9 15. Patient 1 next presented to Respondent on April 6, 2015, at which time he complained
10 of pain. He was noted to have tender knees with decreased range of motion. Respondent's
11 diagnosis was shoulder myositis. He prescribed Norco and Soma. Patient 1's CURES Report
12 reflects that the patient filled the prescription for 60 tablets of Soma 350 mg and 60 tablets of
13 Norco 10/325 mg, that same day.

14 16. Patient 1 presented to Respondent on May 8, 2015, at which time he indicated that his
15 pain is less with the medications. He reported daily stretching and resting at noon with the use of
16 a TENS unit a few times. Respondent's diagnosis was shoulder myositis. He prescribed Norco
17 and Soma as well as continued use of the TENS unit. Patient 1's CURES Report reflects that the
18 patient filled the prescription for 60 tablets of Soma 350 mg and 60 tablets of Norco 10/325 mg,
19 that same day.

20 17. On June 8, 2015, Patient 1 presented to Respondent with a complaint of right
21 shoulder pain and an increase in sleep. Respondent notes that the patient is a "musician, new
22 record deal, not since sober, apprehensive." Respondent's assessment is lumbar myositis and he
23 prescribed 30 tablets of Alprazolam 1 mg.⁶ The remainder of the note is illegible. Patient 1's
24 CURES Report reflects that the patient filled the prescription for 30 tablets of Alprazolam 1 mg
25 and 60 tablets of Norco 10/325 mg, that same day.

26 _____
27 Prescribers authorized to prescribe, order, administer, furnish, or dispense Schedule II, III, or IV controlled
28 substances, and pharmacists, may access CURES data for patient care purposes.

⁶ Alprazolam is a benzodiazepine used to treat anxiety, panic, seizures and insomnia. It is a
Schedule IV Controlled Substance and a dangerous drug.

1 18. Patient 1 next presented to Respondent on July 7, 2015, with a complaint of right
2 shoulder pain. Respondent documented a review of systems and examination. Respondent's
3 diagnosis was shoulder myositis. He prescribed Norco, Soma, Alprazolam and physical therapy.
4 Patient 1's CURES Report reflects that on July 8, 2015, he filled the prescription for 30 tablets of
5 Alprazolam 1 mg and 60 tablets of Norco 10/325 mg.

6 19. Patient 1 presented to Respondent on August 10, 2015, with a complaint of right
7 shoulder pain and "TNS ++." Respondent documented a review of systems and examination.
8 Respondent's diagnosis was shoulder myositis. He prescribed Norco and Alprazolam. Patient
9 1's CURES Report reflects that on August 11, 2015, he filled the prescription for 30 tablets of
10 Alprazolam 1 mg and 60 tablets of Norco 10/325 mg.

11 20. Patient 1 was hospitalized at Santa Barbara Cottage Hospital from September 1-6,
12 2015. His discharge diagnosis was alcohol dependence. Patient 1 was scheduled to see
13 Respondent for follow up on September 10, 2015, at 3:30 p.m. In addition, the patient was
14 instructed to see his therapist and attend Alcoholics Anonymous meetings (7 meetings per week
15 for 90 days). Patient 1's discharge instructions document that he was prescribed Ibuprofen for
16 pain and Trazodone for insomnia and that he was instructed to stop taking Vicodin and Norco.
17 The hospital discharge documents are included in the patient's chart at Respondent's office. The
18 top of each of the five pages appear to reflect that the documents were faxed from the hospital to
19 Respondent's office on September 6, 2015, and there is a signature mark on the first page
20 consistent with Respondent's signature mark at the bottom of each of his progress note.

21 21. Patient 1 presented to Respondent as scheduled on September 10, 2015, with a
22 complaint of "shoulder pain, knees, ankles, much standing." Respondent documented a review of
23 systems and examination. Respondent's diagnosis was right shoulder and knee pain. He
24 prescribed a 2-month supply of Norco and Alprazolam, noting that the patient and his band were
25 traveling to Europe. There is no documentation of the patient's hospitalization for alcohol
26 dependence or the instructions to stop use of Vicodin and Norco. Patient 1's CURES Report
27 reflects that the patient filled the prescriptions for 60 tablets of Alprazolam 1 mg and 120 tablets
28 of Norco 10/325 mg, that same day.

1 22. Patient 1 returned to Respondent 26 days later, on October 6, 2015, complaining that
2 his car was ransacked and that he was having shoulder and knee pain. Respondent documented a
3 review of systems and examination. Respondent's diagnosis was shoulder myositis. He
4 prescribed Norco and Alprazolam. He also offered the patient drying needling (DN), a pain relief
5 alternative similar to acupuncture. Patient 1's CURES Report reflects that on November 10,
6 2015, he filled the prescription for 30 tablets of Alprazolam 1 mg and 60 tablets of Norco 10/325
7 mg.

8 23. Patient 1 next presented to Respondent on November 14, 2015, with complaints of
9 cramping lower abdominal pain on a daily basis for the past two weeks. He denied vomiting or
10 melena. Respondent documented an abnormal abdominal examination and an abnormal
11 extremities examination. His diagnosis was gastrointestinal dysfunction and right shoulder
12 myositis. Respondent prescribed "MED; probiotics, Norco and Alprazolam."

13 24. Patient 1 was hospitalized at Santa Barbara Cottage Hospital from December 11-14,
14 2015. His discharge instructions included an appointment with Respondent on December 17,
15 2015, and referrals to New Beginnings and Smart Recovery. He was also instructed to attend
16 Alcoholics Anonymous meetings (7 meetings per week for 90 days). Patient 1's discharge
17 instructions document that he was prescribed Neurontin⁷ and Campral⁸ and that he was instructed
18 to stop taking Norco and Alprazolam. The hospital discharge documents are included in the
19 patient's chart at Respondent's office. The top of each of the three pages appear to reflect that the
20 documents were faxed from the hospital to Respondent's office on December 14, 2015, and there
21 is a signature mark on the first page consistent with Respondent's signature mark at the bottom of
22 each progress note.

23 25. Patient 1 presented to Respondent as scheduled on December 17, 2015, with
24 complaints of right shoulder pain. Respondent also documented that the patient had right knee
25 pain upon examination. Respondent's diagnosis is right shoulder myositis. Respondent's plan is

26
27 ⁷ Neurontin is a Schedule V Controlled Substance and has a low potential for addiction and abuse.

28 ⁸ Campral, a drug used for the maintenance treatment of alcohol dependence, is not a scheduled
medication.

1 illegible. He recommends a consult, prescribes Norco and Alprazolam and notes "no work 2
2 wks." There is no documentation of the patient's hospitalization or the instructions to stop use of
3 Norco and Alprazolam. Patient 1's CURES Report reflects that the patient filled the prescriptions
4 for 60 tablets of Alprazolam 1 mg and 60 tablets of Norco 10/325 mg, that same day.

5 26. Patient 1 next presents to Respondent on January 5, 2016, at which time he
6 complained of right shoulder pain. It was also noted that the patient has massage and physical
7 therapy for one year for severe neck pain. Respondent documented a review of systems and
8 examination. Respondent's diagnosis was right shoulder pain, cervical myositis and insomnia.
9 His plan included an MRI consult and increased both the patient's Norco and Alprazolam to three
10 times a day. Patient 1's CURES Report reflects that on January 6, 2016, he filled the prescription
11 for 90 tablets of Alprazolam 1 mg and 90 tablets of Norco 10/325 mg.

12 27. On January 12, 2016, Patient 1 underwent an MRI of the right shoulder which
13 revealed a large full-thickness rotator cuff tear and degenerative changes of the humeral joint.

14 28. Patient 1 next saw Respondent on January 15, 2016, to discuss the right shoulder tear
15 shown on the MRI. The patient was given an orthopedic referral to Dr. G. or Dr. T. He was also
16 ordered off work from December 10, 2015 to February 15, 2016 and instructed to use the TENS
17 unit. Pre-operative laboratory studies were scheduled and completed on January 25, 2016.

18 29. Patient 1 next presented to Respondent on February 17, 2016, for right shoulder pain.
19 Respondent noted that the patient was "post op." There are no details regarding the surgery noted
20 (i.e., type of surgery, when it took place, findings, results, etc.) Respondent documented a review
21 of systems and examination. Respondent's diagnosis was right shoulder pain. He prescribed
22 Norco and Alprazolam. Patient 1's CURES Report reflects that he filled the prescription for 90
23 tablets of Alprazolam 1 mg and 90 tablets of Norco 10/325 mg, that same day.

24 30. Patient 1 next presented to Respondent on March 22, 2016, with a documented chief
25 complaint of "sick - pm" and decreased physical therapy. Respondent documented a review of
26 systems and examination. Respondent's diagnosis was right shoulder pain. He prescribed
27 physical therapy, Norco and Alprazolam. Patient 1's CURES Report reflects that he filled the
28 prescription for 60 tablets of Alprazolam 1 mg and 60 tablets of Norco 10/325 mg, that same day.

1 31. Patient 1 saw Respondent on April 19, 2016 and May 23, 2016, for right shoulder
2 pain. On both occasions, Respondent documented a review of systems and examination as well
3 as a diagnosis of right shoulder pain. He documented prescribing Norco and Alprazolam on both
4 dates.

5 32. Patient 1's medical records from Respondent's office also contain records from
6 Cottage Health System reflecting that in August 2016, Patient 1 was involved in a single vehicle
7 rollover high speed motor vehicle crash and had an elevated blood alcohol level of 395 mg per
8 deciliter. The only medication that Patient 1 reported was Neurontin. There were no further
9 progress notes made by Respondent following the May 23, 2016 visit.

10 STANDARD OF CARE

11 33. The standard of medical practice in California requires that when a physician
12 prescribes narcotic pain medication to alleviate pain and suffering, the physician must assess the
13 potential benefits and risks of the narcotic medications and discuss the potential risks and benefits
14 with the patient. The lowest dose possible of narcotic medications is to be prescribed to control
15 the patient's pain and alternative methods of alleviating the patient's pain should be discussed and
16 explored with the patient. In addition, the patient should be seen regularly for re-evaluation of the
17 effectiveness of the treatment and attempts should be made to taper the narcotic medications if
18 appropriate.

19 34. The standard of medical practice in California requires that when a physician
20 prescribes benzodiazepines to a patient, the physician must assess the potential benefits and risks
21 of the medication, recognizing the potential for habituation and dependency. In addition, the
22 patient's response to the medication and the necessity of the medication must be evaluated,
23 including exploration of the use of alternative medications when possible. The physician must
24 discuss these potential risks and benefits of the use of benzodiazepines with the patient.

25 FIRST CAUSE FOR DISCIPLINE

26 (Repeated Negligent Acts)

27 35. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
28 the Code, in that he engaged in repeated acts of negligence in the care and treatment of Patient 1.

1 Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 34,
2 above, as though fully set forth herein. The circumstances are as follows:

3 A. Respondent failed to appropriately prescribe narcotic pain medication to Patient
4 1 in that he failed to document the use of non-steroidal anti-inflammatory medication early in the
5 patient's course and he continued to prescribe narcotic pain medication following Patient 1's
6 hospitalizations for alcohol dependence issues without addressing issues of potential dependence
7 on narcotic pain medication as well as cross dependence of narcotic pain medication with alcohol.

8 B. Respondent failed to appropriately prescribe benzodiazepines to Patient 1 in
9 that he continued to prescribe Alprazolam following Patient 1's hospitalizations for alcohol
10 dependence issues without discussing the hospitalization and despite Alprazolam having been
11 stopped and the patient being prescribed Trazodone during the December 11-14, 2015
12 hospitalization.

13 36. Respondent's acts and/or omissions as set forth in paragraphs 10 through 35, above,
14 whether proven individually, jointly, or in any combination thereof, constitute repeated acts of
15 negligence pursuant to section 2234, subdivision (c), of the Code. Therefore cause for discipline
16 exists.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Excessive Prescribing)**

19 37. Respondent is subject to disciplinary action under Code section 725, in that he
20 excessively prescribed dangerous drugs to Patient 1. Complainant refers to and, by this reference,
21 incorporates herein, paragraphs 9 through 35, above, as though fully set forth herein.

22 38. Respondent's acts and/or omissions as set forth in paragraphs 10 through 35, above,
23 whether proven individually, jointly, or in any combination thereof, constitute unprofessional
24 conduct pursuant to section 725. Therefore cause for discipline exists.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Failure to Maintain Adequate and Accurate Medical Records)**

27 39. Respondent is subject to disciplinary action under section 2266 of the Code for failing
28 to maintain adequate and accurate records relating to his care and treatment of Patient 1.

1 Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 35,
2 above, as though fully set forth herein.

3 **DISCIPLINARY CONSIDERATIONS**

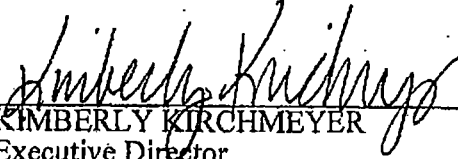
4 40. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on or about November 5, 2013, in Medical Board Case No. 05-2011-
6 219612, a Public Letter of Reprimand was issued to Respondent pursuant to Code section 2233
7 on the grounds that an investigation by the Board revealed that he failed to maintain adequate
8 medical records of a patient in violation of section 2266 of the Code and that he prescribed high
9 levels of diazepam to a geriatric patient without appropriate consideration of side effects or
10 evaluation for complications in violation of section 725 of the Code.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

- 14 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 37727,
15 issued to James Lawrence Kwako, M.D.;
- 16 2. Revoking, suspending or denying approval of his authority to supervise physician
17 assistants pursuant to section 3527 of the Code, and advanced practice nurses;
- 18 3. If placed on probation, ordering him to pay the Board the costs of probation
19 monitoring; and
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: March 13, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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